

# **2007 DRAFTING REQUEST**

## **Assembly Amendment (AA-ASA1-SB40)**

Received: **06/28/2007**

Received By: **gmalaise**

Wanted: **Soon**

Identical to LRB:

For: **Legislative Fiscal Bureau 6-3847**

By/Representing: **Peck**

This file may be shown to any legislator: **NO**

Drafter: **gmalaise**

May Contact:

Addl. Drafters:

Subject: **Employ Priv - miscellaneous  
Health - miscellaneous  
Occupational Reg. - misc**

Extra Copies:

Submit via email: **YES**

Requester's email:

Carbon copy (CC:) to:

**Pre Topic:**

**LFB:.....Peck -**

**Topic:**

**Immunity from liability for reporting violation by health care provider**

**Instructions:**

See Attached--AB224, as affected by AA2 and AA3, i.e., provide for immunity from liability for reporting violations by a health care provider

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	gmalaise 06/28/2007	lkunkel 06/28/2007					
/1			rschluet 06/28/2007		cduerst 06/28/2007		

FE Sent For:

<END>

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#### Topic:

Immunity from liability for reporting violation by health care provider


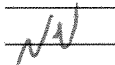
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/?	gmalaise	1/1mk 6/28					

FE Sent For:

<END>

## Malaise, Gordon

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**From:** Peck, Eric  
**Sent:** Wednesday, June 27, 2007 3:31 PM  
**To:** Malaise, Gordon  
**Cc:** Morgan, Charlie  
**Subject:** Drafting Instructions - AB 224

Gordon: I have another drafting request for you from the Assembly Republicans that probably looks familiar to you. They would like an amendment to the JFC budget bill that would put 2007 AB 224, with amendments 2 and 3, into that bill. I believe this bill deals with immunity in the context of reporting possible legal or standard of care violations by health care providers. Please give me a call if you have any questions. Thanks for your help.

Eric Peck, Fiscal Analyst  
Wisconsin Legislative Bureau  
1 East Main Street, Suite 301  
Madison, WI 53703  
Telephone: (608) 266-3847  
FAX: (608) 267-6873  
Email: [Eric.Peck@legis.state.wi.us](mailto:Eric.Peck@legis.state.wi.us)

2007

Date (time)  
needed \_\_\_\_\_

LRB b 0842 / 1

BUDGET SUPERAMENDMENT

[FOR ASSEMBLY SUPER]

GMM: lmk:

/wij/jld/kf

See form **AMENDMENTS — COMPONENTS & ITEMS.**

**ASSEMBLY AMENDMENT  
TO ASSEMBLY SUBSTITUTE AMENDMENT 1  
TO 2007 SENATE BILL 40**

>>FOR ASSEMBLY SUPERAMENDMENT — NOT FOR INTRODUCTION<<

At the locations indicated, amend the substitute amendment as follows:

#. Page 1260, line 2: after that line insert 



#. Page . . . . , line . . . . :

#. Page . . . . , line . . . . :

#. Page . . . . , line . . . . :

#. Page . . . . , line . . . . :

#. Page . . . . , line . . . . :

## 2007 ASSEMBLY BILL 224

March 27, 2007 – Introduced by Representatives PRIDEMORE, TOWNSEND, HINES, OWENS, HAHN, MUSSER, ALBERS, GUNDERSON and J. OTT. Referred to Committee on Judiciary and Ethics.

1     **AN ACT** *to create* 146.997 (5m) of the statutes; **relating to:** immunity from  
2     liability for a health care provider, health care facility, or employee of a health  
3     care provider or health care facility that, in good faith, reports a violation of the  
4     law or of a clinical or ethical standard by another health care provider, health  
5     care facility, or employee of a health care provider or health care facility.

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### ***Analysis by the Legislative Reference Bureau***

Under current law, a physician who in good faith provides the Medical Examining Board with information concerning an allegation that another physician has engaged in unprofessional conduct or acted negligently in treating a patient is immune from liability for any damage that results from any act or omission in providing the information and may not be disciplined by that board for providing the information.

Also, current law prohibits retaliation or other employment discrimination against any employee of a health care facility or of a health care provider who in good faith reports any information, the disclosure of which is not expressly prohibited by law, that would lead a reasonable person to believe that the health care facility or health care provider, or an employee of the health care facility or health care provider, has committed a violation of the law or has provided a health care service of a quality that violates any standard established by law or any clinical or ethical standard established by a professionally recognized accrediting or standard-setting body (clinical or ethical standard) and that poses a potential risk to public health or

**ASSEMBLY BILL 224**

safety: 1) to any appropriate state agency; 2) to any professionally recognized accrediting or standard-setting body that has accredited, certified, or otherwise approved the health care facility or health care provider (accrediting or standard-setting body); 3) to any officer or director of the health care facility or health care provider; or 4) to any employee of the health care facility or health care provider who is in a supervisory capacity or in a position to take corrective action (supervisor). In addition, current law prohibits retaliation or other employment discrimination against any employee of a health care facility or health care provider who initiates, participates in, or testifies in any action or proceeding in which such a violation is alleged or who provides to any legislator or legislative committee any information relating to such an alleged violation.

This bill provides for immunity from liability for any health care provider, health care facility, or employee of a health care provider or health care facility that in good faith does any of the following:

1. Reports any information, the disclosure of which is not expressly prohibited by law, relating to an allegation that another health care provider, health care facility, or employee has provided a health care service of a quality that violates any standard established by law or any health care provider or health care facility has committed a violation of the law or has provided a health care service of a quality that violates any standard established by law or any clinical or ethical standard and that poses a potential risk to public health or safety, has engaged in unprofessional conduct, or has acted negligently in treating a patient to any appropriate state agency; to any accrediting or standard-setting body; or to any officer, director, or supervisor of the health care facility or health care provider.

2. Initiates, participates in, or testifies in any action or proceeding in which it is alleged that another health care provider, health care facility, or employee of a health care provider or health care facility has committed a violation of the law or has provided a health care service of a quality that violates any standard established by law or any clinical or ethical standard and that poses a potential risk to public health or safety, has engaged in unprofessional conduct, or has acted negligently in treating a patient.

3. Provides to any legislator or legislative committee any information relating to an allegation that another health care provider, health care facility, or employee of a health care provider or health care facility has committed a violation of the law or has provided a health care service of a quality that violates any standard established by law or any clinical or ethical standard and that poses a potential risk to public health or safety, has engaged in unprofessional conduct, or has acted negligently in treating a patient.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

2875h - (4)

1

SECTION 1. 146.997 (5m) of the statutes is created to read:

## ASSEMBLY BILL 224

Except as provided in par. (c),  
any

1 146.997 (5m) IMMUNITY FROM LIABILITY. (a) ~~Any~~ health care provider, health  
2 care facility, or employee of a health care provider or health care facility that in good  
3 faith reports or provides any information <sup>PIE (after comma)</sup> or that in good faith initiates, participates  
4 in, or testifies in any action or proceeding, is immune from all civil and criminal  
5 liability that may result from any act or omission in reporting or providing that  
6 information, or in initiating, participating in, or testifying in that action or  
7 proceeding, as follows:

8 1. Reports to a person specified in sub. (2) (a) (intro.) any information <sup>(use 3 times)</sup> ~~the~~  
9 ~~disclosure of which is not expressly prohibited by any state law or rule or federal law~~  
10 ~~or regulation~~ relating to an allegation that ~~another~~ health care provider, health care  
11 facility, or employee of a health care provider or health care facility has committed  
12 a violation specified in sub. (2) (a) 1. or 2., has engaged in unprofessional conduct, or  
13 has acted negligently in treating a patient.

14 2. Initiates, participates in, or testifies in any action or proceeding in which it  
15 is alleged that ~~another~~ health care provider, health care facility, or employee of a  
16 health care provider or health care facility has committed a violation specified in sub.  
17 (2) (a) 1. or 2., has engaged in unprofessional conduct, or has acted negligently in  
18 treating a patient.

19 3. Provides to any legislator or legislative committee any information relating  
20 to an allegation that ~~another~~ health care provider, health care facility, or employee  
21 of a health care provider or health care facility has committed a violation specified  
22 in sub. (2) (a) 1. or 2., has engaged in unprofessional conduct, or has acted negligently  
23 in treating a patient.

24 (b) For purposes of par. (a), a health care provider, health care facility, or  
25 employee of a health care provider or health care facility is not acting in good faith

Insert 3-23



## ASSEMBLY BILL 224

## SECTION 1

or 4.

1 if the health care provider, health care facility, or employee reports any information  
 2 under par. (a) 1. that the health care provider, health care facility, or employee knows  
 3 or should know is false or misleading; initiates, participates in, or testifies in any  
 4 action or proceeding under par. (a) 2. based on information that the health care  
 5 provider, health care facility, or employee knows or should know is false or  
 6 misleading; or provides any information under par. (a) 3. that the health care  
 7 provider, health care facility, or employee knows or should know is false or  
 8 misleading.

**SECTION 2. Initial applicability.**

9 **(100) OW**  
 10 **(1A) IMMUNITY FROM LIABILITY FOR HEALTH CARE PROVIDERS, FACILITIES, AND**  
 11 **EMPLOYEES. This act first applies to a health care provider, health care facility, or**  
 12 **employee of a health care provider or health care facility that reports or provides**  
 13 **information, or that initiates, participates in, or testifies in any action or proceeding,**  
 14 **as described in section 146.997 (5m) (a) of the statutes, as created by this act, on the**  
 15 **effective date of this subsection.** **(END)**

(END)

or that discloses patient information  
 as described in section 146.997 (5r)  
 of the statutes, as created by this act,

# Page 1658, line 16 (i) after that line insert:

Insert 3-23

**ASSEMBLY AMENDMENT 3,  
TO 2007 ASSEMBLY BILL 224**

June 21, 2007 - Offered by Representative KLEEFISCH.

At the locations indicated, amend the bill as follows:

**1.** Page 1, line 3: after "reports" insert "or provides information about".

**2.** Page 1, line 4: after "standard" insert ", unprofessional conduct, or negligence in treating a patient".

**3.** Page 1, line 5: delete "or employee" and substitute "employee, or former employee".

**4.** Page 3, line 3: after "information," insert "the disclosure of which is not expressly prohibited by state law or rule or federal law or regulation,".

**5.** Page 3, line 8: delete "information, the" and substitute "information".

**6.** Page 3, line 9: delete that line.

**7.** Page 3, line 10: delete "or regulation,".

**8.** Page 3, line 23: after that line insert:

*Insert 3-231*

*4* 4. Provides to any prospective employer of an employee or former employee of  
2 a health care provider or health care facility any information relating to an allegation  
3 that the employee or former employee has committed a violation specified in sub. (2)  
4 (a) 1. or 2., has engaged in unprofessional conduct, or has acted negligently in  
5 treating a patient. *[initials]*

6 **9.** Page 4, line 6: after "3." insert "or 4."  
7

(END)

*(edit in)*

Inst 4-8

**ASSEMBLY AMENDMENT 2,  
TO 2007 ASSEMBLY BILL 224**

June 5, 2007 - Offered by Representative PRIDEMORE.

At the locations indicated, amend the bill as follows:

1. Page 1, line 2: after "for" insert ", and disclosure of patient information by,"

2. Page 1, line 4: delete "another" and substitute "a".

3. Page 3, line 1: delete "Any" and substitute "Except as provided in par. (c),  
any".

4. Page 3, line 10: delete "another" and substitute "a".

5. Page 3, line 15: delete "another" and substitute "a".

6. Page 3, line 20: delete "another" and substitute "a".

7. Page 4, line 8: after that line insert:

(c) Paragraph (a) does not apply to a health care provider, health care facility,  
or employee of a health care provider or health care facility that reports or provides  
any information or that initiates, participates in, or testifies in any action or

28751

Insert 4-8

proceeding concerning a violation specified in sub. (2) (a) 1. or 2., unprofessional conduct, or negligence in treating a patient by the health care provider, health care facility, or employee.

**SECTION 1m.** 146.997 (5r) of the statutes is created to read:

**146.997 (5r) DISCLOSURE OF PATIENT INFORMATION.** Notwithstanding s. 146.82 (1), a health care provider, health care facility, or employee of a health care provider or health care facility reporting information as described in sub. (5m) (a) 1. to an agency specified in sub. (2) (a) (intro.) that has the authority to investigate and take action against a health care provider, health care facility, or employee of a health care provider or health care facility for the type of conduct reported may disclose to that agency the name of the patient who is the subject of, and a description of the event giving rise to, the alleged violation, unprofessional conduct, or negligent act. A person receiving identifying information about a patient under this subsection shall keep the information confidential and may not disclose that information except for the purpose of investigating and taking action on the alleged violation, unprofessional conduct, or negligent act, with the informed consent of the patient or of a person authorized by the patient, or as authorized by a court of record.

**8.** Page 4, line 10: after "FOR" insert "AND DISCLOSURE OF PATIENT INFORMATION BY,".

**9.** Page 4, line 14: after "act," insert "or that discloses patient information, as described in section 146.997 (5r) of the statutes, as created by this act,".

(END)

End of insert



State of Wisconsin  
2007 - 2008 LEGISLATURE

LRBb0842/1  
GMM:lmk/wlj/jld/kjf:rs

LFB:.....Peck - Immunity from liability for reporting violation by health care provider

FOR 2007-09 BUDGET -- NOT READY FOR INTRODUCTION

**ASSEMBLY AMENDMENT ,**

**TO ASSEMBLY SUBSTITUTE AMENDMENT 1,**

**TO 2007 SENATE BILL 40**

1 At the locations indicated, amend the substitute amendment as follows:

2 **1.** Page 1260, line 2: after that line insert:

3 **"SECTION 2875h.** 146.997 (5m) of the statutes is created to read:

4 146.997 (5m) IMMUNITY FROM LIABILITY. (a) Except as provided in par. (c), any  
5 health care provider, health care facility, or employee of a health care provider or  
6 health care facility that in good faith reports or provides any information, the  
7 disclosure of which is not expressly prohibited by state law or rule or federal law or  
8 regulation or that in good faith initiates, participates in, or testifies in any action or  
9 proceeding, is immune from all civil and criminal liability that may result from any

1 act or omission in reporting or providing that information, or in initiating,  
2 participating in, or testifying in that action or proceeding, as follows:

3 1. Reports to a person specified in sub. (2) (a) (intro.) any information relating  
4 to an allegation that a health care provider, health care facility, or employee of a  
5 health care provider or health care facility has committed a violation specified in sub.  
6 (2) (a) 1. or 2., has engaged in unprofessional conduct, or has acted negligently in  
7 treating a patient.

8 2. Initiates, participates in, or testifies in any action or proceeding in which it  
9 is alleged that a health care provider, health care facility, or employee of a health care  
10 provider or health care facility has committed a violation specified in sub. (2) (a) 1.  
11 or 2., has engaged in unprofessional conduct, or has acted negligently in treating a  
12 patient.

13 3. Provides to any legislator or legislative committee any information relating  
14 to an allegation that a health care provider, health care facility, or employee of a  
15 health care provider or health care facility has committed a violation specified in sub.  
16 (2) (a) 1. or 2., has engaged in unprofessional conduct, or has acted negligently in  
17 treating a patient.

18 4. Provides to any prospective employer of an employee or former employee of  
19 a health care provider or health care facility any information relating to an allegation  
20 that the employee or former employee has committed a violation specified in sub. (2)  
21 (a) 1. or 2., has engaged in unprofessional conduct, or has acted negligently in  
22 treating a patient.

23 (b) For purposes of par. (a), a health care provider, health care facility, or  
24 employee of a health care provider or health care facility is not acting in good faith  
25 if the health care provider, health care facility, or employee reports any information

1 under par. (a) 1. that the health care provider, health care facility, or employee knows  
2 or should know is false or misleading; initiates, participates in, or testifies in any  
3 action or proceeding under par. (a) 2. based on information that the health care  
4 provider, health care facility, or employee knows or should know is false or  
5 misleading; or provides any information under par. (a) 3. or 4. that the health care  
6 provider, health care facility, or employee knows or should know is false or  
7 misleading.

8 (c) Paragraph (a) does not apply to a health care provider, health care facility,  
9 or employee of a health care provider or health care facility that reports or provides  
10 any information or that initiates, participates in, or testifies in any action or  
11 proceeding concerning a violation specified in sub. (2) (a) 1. or 2., unprofessional  
12 conduct, or negligence in treating a patient by the health care provider, health care  
13 facility, or employee.

14 **SECTION 2875i.** 146.997 (5r) of the statutes is created to read:

15 146.997 (5r) DISCLOSURE OF PATIENT INFORMATION. Notwithstanding s. 146.82  
16 (1), a health care provider, health care facility, or employee of a health care provider  
17 or health care facility reporting information as described in sub. (5m) (a) 1. to an  
18 agency specified in sub. (2) (a) (intro.) that has the authority to investigate and take  
19 action against a health care provider, health care facility, or employee of a health care  
20 provider or health care facility for the type of conduct reported may disclose to that  
21 agency the name of the patient who is the subject of, and a description of the event  
22 giving rise to, the alleged violation, unprofessional conduct, or negligent act. A  
23 person receiving identifying information about a patient under this subsection shall  
24 keep the information confidential and may not disclose that information except for  
25 the purpose of investigating and taking action on the alleged violation,



1 unprofessional conduct, or negligent act, with the informed consent of the patient or  
2 of a person authorized by the patient, or as authorized by a court of record.”.

3 **2.** Page 1658, line 16: after that line insert:

4 “(10w) IMMUNITY FROM LIABILITY FOR, AND DISCLOSURE OF PATIENT INFORMATION BY,  
5 HEALTH CARE PROVIDERS, FACILITIES, AND EMPLOYEES. The treatment of section 146.997  
6 (5m) and (5r) of the statutes first applies to a health care provider, health care facility,  
7 or employee of a health care provider or health care facility that reports or provides  
8 information, or that initiates, participates in, or testifies in any action or proceeding,  
9 as described in section 146.997 (5m) (a) of the statutes, as created by this act, or that  
10 discloses patient information, as described in section 146.997 (5r) of the statutes, as  
11 created by this act, on the effective date of this subsection.”.

12 (END)